

LEWIS
ANDROCA
LLP

L A W Y E R S

E-Filed on 10/29/09

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Facsimile (702) 949-8321
Telephone (702) 949-8320

Rob Charles NV State Bar No. 006593
Email: rcharles@lrlaw.com
John C. Hinderaker AZ State Bar No. 18024
Email: jhinderaker@lrlaw.com

Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE COMPANY,
USA CAPITAL REALTY ADVISORS, LLC,
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,
USA CAPITAL FIRST TRUST DEED FUND, LLC,
USA SECURITIES, LLC,

Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR¹
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR²
Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

**OBJECTION OF THE USACM
LIQUIDATING TRUST TO PROOFS OF
CLAIM FILED BY BARRY J. GOLDSTEIN,
PATRICIA GOLDSTEIN AND CAPITAL
MORTGAGE INVESTORS, INC. FOR LACK
OF DOCUMENTATION WITH
CERTIFICATE OF SERVICE**

Hearing Date: December 18, 2009
Hearing Time: 1:30 p.m.

Pursuant to section 502 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the USACM Liquidating Trust (the “USACM Trust”) objects to claim no. 10725-01167 filed by Barry J. and Patricia Goldstein (“Goldstein”) and claim no. 10725-01163

¹ This bankruptcy case was closed on September 23, 2008

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 21, 2007.

1 filed by Capital Mortgage Investors, Inc., (“Capital Mortgage”) (collectively, the
2 “Claims”) because the Claims were filed without supporting documentation. The Trust
3 requested supporting documentation from the claimants, but none was provided. This
4 Objection is supported by the Court’s record and the following Memorandum.

5 MEMORANDUM

6 **I. JURISDICTION**

7 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and
8 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
9 proceeding under 28 U.S.C. § 157(b)(2)(B).

10 The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and
11 Bankruptcy Rule 3007.

12 **II. BACKGROUND**

13 On April 13, 2006 (“Petition Date”), USA Commercial Mortgage
14 Company (“USACM”), USA Securities, LLC (“USA Securities”), USA Capital Realty
15 Advisors, LLC (“USA Realty”), USA Capital Diversified Trust Deed Fund, LLC
16 (“DTDF”), USA Capital First Trust Deed Fund, LLC (“FTDF” and together with DTDF ,
17 the “Funds”) (collectively the “Debtors”), filed voluntary petitions for relief under chapter
18 11 of the Bankruptcy Code. The Debtors continued to operate their businesses, if any, as
19 debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
20 Post-petition management of the Debtors was under the direction of Thomas J. Allison of
21 Mesirow Financial Interim Management, LLC (“Mesirow”), who served as the Chief
22 Restructuring Officer.

23 On January 8, 2007, this Court entered its Order Confirming the "Debtors' Third
24 Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.
25 2376].
26

1 Debtors' Third Amended Chapter 11 Plan of Reorganization (the "Plan") [Docket
2 No. 1799] provides the following deadlines for objections to Claims:

3 (A) for any and all Claims and Equity Interests to which the
4 General Bar Date applies, ninety (90) days after the Effective Date; (B) for
5 any and all Claims to which the Administrative Claims Bar Date or the
6 Professionals Administrative Bar Date applies, thirty (30) days after the
7 expiration of the respective Bar Date; and (C) for any and all Claims to
8 which the Bar Date applicable under section B.3 of Art. V of the Plan
9 applies, thirty (30) days after the expiration of that Bar Date.

10 The deadline for claims objections has been continued from time to time by this
11 Court's order. The current deadline for such objections is February 4, 2010 [DE 7680].

12 Under the Plan, the USACM Trust is the successor to USACM with respect to
13 standing to seek allowance and disallowance of Claims.

14 The USACM Trust exists as of the Effective Date of the Plan, which was March 12,
15 2007. Geoffrey L. Berman is the Trustee.

16 Objections to these claims based upon lack of documentation were previously filed
17 [DE 5365 and 5367]. Counsel for claimants filed a response in opposition to the objection
18 [DE 5484]. The response provided documentation as to the liquidated claims and agreed
19 to provide the documentation as to the unliquidated claims. A stipulation re withdrawal
20 of Objection for Lack of Documentation to Proofs of Claim filed by Barry J. Goldstein,
21 Patricia Goldstein and Capital Mortgage Investors, Inc. [DE 5545] was filed with the
22 Court. On January 2, 2008, the Court entered an order approving the stipulation [DE
23 5555] and the objections were withdrawn

24 Counsel for the Trust contacted claimant's counsel requesting the documentation in
25 support of the unliquidated claims. The documentation, despite the granting of several
26 requests for extension, was never provided. Further, the proofs of claim do not appear to
be supported by USACM's books and records. The USACM Trust contends that the
Goldstein and Capital Mortgage Claims are not valid Claims and should be disallowed
because there is no supporting documentation for the Claims as required under Bankruptcy

Rule 3001(f).

III. APPLICABLE AUTHORITY

Under the Bankruptcy Code, any Claim for which a proof of claim has been filed will be allowed unless a party in interest objects. If a party in interest objects to the proof of claim, the Court, after notice and hearing, shall determine the amount of the Claim and shall allow the Claim except to the extent that the Claim is “unenforceable against the debtor . . . under any . . . applicable law for a reason other than because such claim is contingent or unmatured.” 11 U.S.C. § 502(b).

The USACM Trust is entitled to object to proofs of claim under 11 U.S.C. § 502(a). This objection is timely under the Court’s orders.

IV. OBJECTIONS TO CLAIMS

The USACM Trust objects to the Claim No. 10725-01167 filed by Goldstein and 10725-01163 filed by Capital Mortgage because they lack supporting documentation. The USACM Trust asks that the Court disallow these Claims in their entirety. The USACM Trust requests any other relief the Court considers appropriate.

The USACM Trust reserves the right to modify, supplement and/or amend this Objection as it pertains to any Claim or claimant herein.

LEWIS AND ROCA LLP

By: /s/ JH (#18024)

Rob Charles, NV 6593

John C. Hinderaker, AZ 18024 (*pro hac vice*)

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169-5996

Facsimile (702) 949-8321

Telephone (702) 949-8320

Email: RCharles@LRLaw.com

Counsel for USACM Liquidating Trust

LEWIS
AND

ROCA
LLP

L A W Y E R S

Copy of the foregoing mailed on October
29, 2009 to:

Jeffrey S. Berlowitz, Esquire
Phillips, Cantor & Berlowitz, P.A.
Attorneys for Goldstein and Capital
Mortgage
4000 Hollywood Blvd., Suite 375-South
Hollywood, FL 33021
jberlowitz@phillipslawyers.com

/s/ Leilani Lista
Lewis and Roca LLP